

**CITY COUNCIL OF THE CITY OF SAN DIEGO
CLOSED SESSION DOCKET
FOR
MONDAY, FEBRUARY 6, 2006
CITY ADMINISTRATION BUILDING
COMMITTEE ROOM – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

NOTE: In accordance with the San Diego City Council Permanent Rule for Noticing and Conduct of Closed Session Meetings, adopted on February 28, 2005, a portion of the regular open meeting agenda of the City Council has been reserved for City Attorney comment, public comment, and City Council discussion of the content of this Closed Session Docket. **Public testimony for this Closed Session Agenda will be taken today during the 2:00 p.m. Council meeting.**

The City Council may meet in Closed Session immediately following the conclusion of the regular open session meeting on Monday, February 6, 2006, or may meet on Tuesday, February 7, 2006.

Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):

CS-1 *City of San Diego v. Callan Associates, Inc., et al.*
San Diego Superior Court Case No. GIC 852419

DCA assigned: A. Donovan

This is a claim for monetary damages filed on behalf of the City against Callan Associates, Inc., the investment consultant for SDCERS and Gabriel, Roeder Smith, Inc., the SDCERS actuary. Discovery and investigation are ongoing; and initial settlement discussions have commenced between the City and GRS. This case is being handled jointly by the Office of the City Attorney and the outside law firm of Heller Ehrman. In closed session the City Attorney will update the Mayor and Council on the status of the matter and seek additional funding for outside counsel services.

CS-2 *SDCERS v. San Diego City Attorney Michael J. Aguirre, et al. more*
San Diego Superior Court Case No. GIC 841845

DCA assigned: A. Donovan

This case was originally filed by SDCERS for declaratory relief regarding whether the City Attorney's office may serve as general counsel for SDCERS. The City Attorney cross-complained against SDCERS for declaratory relief regarding the legality of pension benefits granted under MP I and MP II. In closed session the City Attorney will update the Mayor and Council on the status of the matter.

CS-3 *SDCERS v. City of San Diego*
San Diego Superior Court Case No. GIC 851286

DCA assigned: A. Donovan

This is a case for declaratory relief that was filed by SDCERS and is, essentially, a mirror image of the cross-complaint on file in the first SDCERS case. In this case SDCERS seeks a judicial declaration upholding the legality of benefits granted under MP I and MP II. Complaints in intervention have been filed by the various unions. Additionally, a separate complaint on the same issues was filed on behalf of 190 individual retirees, which has been consolidated with this case. The City Attorney's office has moved to consolidate this case with the first SDCERS case. That motion to consolidate will be heard on January 13, 2006. In closed session the City Attorney will update the Mayor and Council on the status of the matter.

CS-4 *Building Industry Association, Inc. v. City of San Diego*
San Diego Superior Court Case No. GIC 817064

DCA assigned: R. Martinez

This case involves a challenge to the City Council's decision on June 3, 2003, to adopt the Inclusionary Affordable Housing Regulations [Ordinance], codified at Chapter 14, Article 2 of the San Diego Municipal Code [SDMC]. Plaintiff Building Industry Association challenges the validity of the Ordinance on several grounds, including claims that the Ordinance authorizes an illegal exaction, unlawfully delegates legislative power, and impairs the vested property rights of land owners. The case is set for trial on March 3, 2006. In closed session, the City Attorney will update the City Council on the status of the litigation and seek direction on Plaintiff's most recent offer to settle the case.

CS-5 *Valerie O'Sullivan v. City of San Diego, et al.*
San Diego Superior Court Case No. GIC 826918

DCA assigned: R. Martinez

This matter involves a challenge to the City's use and maintenance of the "Children's Pool" in La Jolla under 19131 state tidelands trust. On October 4, 2005, the trial court found the City to be in breach of the 1931 state tidelands trust and its obligations as trustee under the trust. The trial court ordered the City to "employ all reasonable means to restore the Pool to its 1941 condition by removing the sand build-up and further reduce the level of water contamination in the Pool to levels certified by the County of San Diego as being safe for humans." On October 20, 2005, the City appealed the trial court's decision. As a result, the trial court's order is stayed and jurisdiction rests with the Court of Appeal. In addition, on December 16, 2005, the trial court ordered the City to pay Plaintiff \$479,847.13 in attorney's fees and costs. The City has appealed that order as well.

CS-6 *Border Business Park v. City of San Diego*
Appellate Case No. D039225; San Diego Superior Court Case No. GIC 692794
Otay Acquisitions v. City of San Diego
San Diego Superior Court Case No. GIC 753247
National Enterprises, Inc. v. City of San Diego
San Diego Superior Court Case Nos. GIC 791407; GIC 805465

EACA assigned: D. McGrath

These matters involve a variety of disputes between certain companies owned or controlled by Roque de la Fuente and the City of San Diego regarding the Border Business Park in Otay Mesa. In closed session the City Attorney and Judge Irvine will update the Council on the settlement offer.